
(2002) 03 DEL CK 0164
In the Delhi High Court
Case No : LPA 219 of 2002

Tek Chand

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-03-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 17(4), 4, 6

Citation : (2002) 64 DRJ 338

Hon'ble Judges : Madan B. Lokur, J;A.D. Singh, J

Bench : Division Bench

Advocate : Rajeev Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Anil Dev Singh, J.—This Letters Patent Appeal is directed against the order passed by the learned Single Judge dated 7th January, 2002 by which the learned Single Judge rejected the challenge of the appellant to the acquisition proceedings. It is not disputed that the land was notified u/s 4 read with Section 17(4) of the Land Acquisition Act, 1894 as far back as 18th April, 1995. A declaration u/s 6 was issued on 26th April, 1996 and Award was made and published on 24th April, 1998. The appellant challenged the acquisition proceedings only in the year 2000. The only Explanation of the appellant for challenging the acquisition proceedings after an inordinate delay of five years is that the appellant had preferred a representation to the third respondent against the acquisition of land which was pursued by him bonafide. Assuming that this to be so, it appears that the appellant remained on his own oars and did not challenge the acquisition proceedings for a long time. It appears to us that on the ground of preferring a non-statutory representation before an administrative authority the delay in filing the writ petition cannot be excused.

2. Accordingly, we are of the opinion that the learned Single Judge was right in rejecting the writ petition on the ground of laches on the part of the appellant. Even otherwise we do not find any illegality in the acquisition proceedings calling

for our interference. Learned counsel for the appellant submits that some of the land which was notified under the aforesaid notification issued u/s 4 of the Land Acquisition Act has been denotified. He claims similar treatment in respect of the land of the appellant.

3. We have considered the submission of the learned counsel for the appellant. In this regard it may be pointed out that possession of the land was taken over by means of execution of a panchnama on 13th January, 1997. The Supreme Court in Balmokand Khatri Educational and Industrial Trust, Amritsar Vs. State of Punjab and others, dealt with the question of validity of the mode of taking possession by drafting the Panchnama in the presence of Panchas and taking possession and giving delivery of the land. The Supreme Court in this regard held as follows:

"...It is seen that the entire gamut of the acquisition proceedings stood completed by April 17, 1976 by which date possession of the land had been taken. No doubt, Shri Parekh has contended that the appellant still retained their possession. It is now well-settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession is drafting the Panchnama in the presence of Panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. subsequent thereto, the retention of possession would tantamount only to illegal or unlawful possession..."

4. The aforesaid view was reiterated by the Supreme Court in Tamil Nadu Housing Board Vs. A. Viswam (Dead) by Lrs., wherein it was held as follows:

"It is settled law by series of judgments of this Court that one of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchanama by the LAO in the presence of witnesses winged by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land. It is common knowledge that in some cases the owner/interested person may not cooperate in taking possession of the land."

5. Keeping in mind the aforesaid decisions of the Supreme Court, we have no manner of doubt that the possession of the land was validly taken over by the respondent.

6. This being so, after the possession of land was taken over it cannot be denotified u/s 48 of the Land Acquisition Act.

7. It also appears to us that even if it be assumed that some land was illegally released from acquisition, such release cannot serve as a ground for a denotifying the instant land. We cannot direct the respondent to denotify the land just because some land was wrongly released from acquisition. Two wrongs cannot make a right.

8. No other contention was urged by the learned counsel for the appellant. We

find no merit in the appeal. Accordingly, the same is dismissed.